NOS. 96-552 and 96-553



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1996

RACHEL AGOSTINI, *et al.*,
*Petitioners*,

v.

BETTY-LOUISE FELTON, *et al.*,
*Respondents*.

CHANCELLOR OF THE BOARD OF
EDUCATION OF THE CITY OF NEW YORK, *et al.*,
*Petitioners*,

v.

BETTY-LOUISE FELTON, *et al.*,
*Respondents*.

On Writs Of Certiorari To The United States
Court Of Appeals For The Second Circuit

# BRIEF AMICI CURIAE OF COUNCIL ON RELIGIOUS FREEDOM, AMERICANS FOR RELIGIOUS LIBERTY, MARY L. HELMS, AMY T. HELMS, MARIE L. SCHNEIDER, DARLA FERNANDEZ, AND DUANE C. PURDY IN SUPPORT OF RESPONDENTS

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## INTEREST OF *AMICI CURIAE*

Council on Religious Freedom ("CRF"), a national, nonprofit organization, exists to uphold and promote the principle of religious liberty. Many of the members of CRF have children enrolled in church-operated schools and are concerned that those continue as distinctive sectarian ministries. Also, several members of the CRF Board have served on the governing bodies of religious educational institutions and appreciate the need for those institutions to be free to convey their religious ideals and to integrate the sponsoring church's religious values with education

Americans for Religious Liberty ("ARL") is a national, nonprofit public interest educational organization dedicated to defending religious liberty, public education, and the constitutional principle of separation of church and state. ARL has been a friend of the court in numerous briefs filed in the United States Supreme Court.

Individual *amici* Mary L. Helms, Amy T. Helms, and Marie L. Schneider are plaintiffs in *Helms v. Cody*, 856 F. Supp. 1102, 1106-22, 1164 (E.D. La. 1994), referred to in footnote 17, page 49, of the brief filed by the Secretary for Education. The Jefferson Parish School District and intervenor-defendants have filed an appeal to that portion of the judgment: (1) declaring that the Louisiana special education statute, La. Rev. Stat. § 17:1941-56, is unconstitutional as administered by the Jefferson Parish Public School System; and (2) permanently enjoining the special education program as administered by the school district. The Jefferson Parish program, partly on the basis of this Court's decision in *Aguilar v. Felton*, 473 U.S. 402 (1985), "permanently enjoined [defendants] from approving, funding, administering, implementing, or in any way providing state-

paid special education teachers to teach core secular subjects in self-contained resource classrooms throughout the school day on the premises of pervasively sectarian schools, . . . ."

Individual *amicus* Darla Fernandez was one of the plaintiffs in *Holguin v. Sacred Heart School*, filed in the Northern District of California as Case No. C90-20056 JW. That case involved the administration of Chapter 1 in Hollister, California, resulting in a consent judgment in favor of plaintiffs and against the school district permanently enjoining the school district from providing funding and/or school district employees for live instruction under Chapter 1 to students in any facility located on a sectarian school campus. Appendix 20a-24a. All of the plaintiffs in that case were either parents of or former students of the Sacred Heart School, a private Catholic school in Hollister. Appendix 17a.

Individual *amicus* Duane C. Purdy was one of the intervenor-plaintiffs in *Wamble v. Bell*, 598 F. Supp. 1356 (W.D. Mo. 1984), *appeal dismissed*, 473 U.S. 922 (1985). This case resulted in a judgment permanently enjoining the Title I (referred to as Chapter 1 in subsequent legislation) bypass as it was administered in Missouri on the premises of religiously-affiliated schools.

Letters of consent from all the parties are being filed concurrently with this brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners have not, and cannot, point to any appellate court decision holding contrary to *Public Funds for Public Schools v. Marburger*, 358 F. Supp. 29, *aff'd*, 417 U.S. 961 (1974), and *Meek v. Pittenger*, 421 U.S. 349 (1975), which prohibited public school teachers or counselors from providing



auxiliary services on the premises of church-operated elementary and secondary schools. Petitioners attempt to use Rule 60(b) of the Fed. R. Civ. P. as a vehicle for rejection of Establishment Clause law followed by this and lower courts for more than 20 years. Such a procedure is inappropriate and would be unfair to those, including individual *amici* herein, who have successfully obtained injunctive relief where a more fully developed record in the other cases supports the *Marburger, Meek* and *Felton* holdings.

1. Whether or not Chapter 1 advances religion in violation of the Establishment Clause depends in part on whether it constitutes direct aid to a church-related elementary and/or secondary school.

2. When the aid provided to sectarian institutions by the government is in the form of remedial teacher or counselor services provided on sectarian school premises, such services constitute direct aid to the school advancing religion.

3. Even if the benefit that flows to sectarian elementary and/or secondary schools is earmarked for secular purposes, it still violates the Establishment Clause. This is because this Court has consistently held that in an institution in which religion is so pervasive that a substantial portion of its functions is subsumed in its religious mission, such aid has the impermissible primary effect of advancing religion.

4. This Court has clearly distinguished between direct aid to pervasively sectarian institutions and to other religiously-affiliated organizations. In the case of the former, such as church-operated elementary and secondary schools, the Court has concluded there is a "substantial" risk the aid would result in religious indoctrination. However, when the benefit goes to religiously-affiliated institutions that are not deemed to be

pervasively sectarian, such as colleges and universities, the Court refuses to presume that such benefit has the primary effect of advancing religion.

5. Whether or not an educational program delivered on the premises of a sectarian elementary or secondary school is designed to "supplement" or "supplant" the regular curriculum is not a relevant constitutional distinction in direct aid cases.

6. *Aguilar v. Felton*, 473 U.S. 402 (1985), was not a departure from prior case law, but rather the application of this Court's earlier teachings in *Marburger* and *Meek*.

7. To be certain auxiliary teachers and counselors remain religiously neutral requires the state to impose constitutionally unacceptable limitations on activities of religious organizations and engage in continuing surveillance.

8. In *Wamble v. Bell*, 598 F. Supp. 1356 (W.D. Mo. 1984), the court, with benefit of a full trial record, concluded the Chapter 1 program operated by the federal government in Missouri had resulted in excessive entanglement. That court's findings confirm the conclusions of this Court in *Marburger, Meek* and *Felton*.

9. Litigation by plaintiffs in *Holguin v. Sacred Heart School*, including one of the individual *amici* herein, demonstrates that the claimed safeguards allegedly in place in Title I do not protect against an unconstitutional administration of the program. It also confirms this Court's decision in *Felton*.

10. The *Felton* plaintiffs litigated their case on the basis of this Court's prior holdings in *Marburger* and *Meek*. The *Felton* record consisted primarily of a narrative summary



which synthesized numerous affidavits prepared on behalf of defendants and seven defense witnesses. It does not provide an appropriate record for adequate review of the issues raised.

11. Currently pending in the Fifth Circuit Court of Appeals is a case, *Helms v. Cody*, wherein the district court entered an injunction permanently enjoining state-paid special education teachers from teaching secular subjects in sectarian schools. That case, with a fully-developed record, provides a more appropriate vehicle upon which this Court may determine the issues raised by petitioners in their Rule 60(b) motion.

12. Both *Wamble v. Bell*, which permanently enjoined the Title I bypass administered in Missouri on the premises of religious schools; and *Holguin v. Sacred Heart School*, which enjoined the school district from providing live instruction under Chapter 1 to students on a sectarian school campus, have fully-developed factual records. Either of these cases would be more appropriate for Rule 60(b) motion review.

13. In the event any relief is granted to petitioners, it should be restricted to a remand without opinion for the purpose of permitting the parties to develop a full record as to the past and present administration of Title I within the New York City School District. This Court should limit its determination on a Rule 60(b) motion to the injunction issued concerning the administration of the Chapter 1 program within the New York City School District. To do otherwise would unfairly prejudice the rights of the successful plaintiffs in other cases having final judgments prohibiting public school programs from providing teaching and counseling services on the premises of church-operated elementary and secondary schools.

## ARGUMENT

### I. *AGUILAR v. FELTON* IS IN ACCORD WITH BOTH LONG-ESTABLISHED AND CURRENT ESTABLISHMENT CLAUSE JURISPRUDENCE.

Petitioners Agostini, et al., ask this Court not only to overturn *Aguilar v. Felton*, 473 U.S. 402 (1985), but to determine whether the Establishment Clause prohibits remedial services to eligible parochial school children in the same setting as their public school counterparts -- on the premises of the schools they attend. However, petitioners seem to have receded somewhat from the rigid position they took in their Petition for Writ of Certiorari. There they claimed that "*Aguilar* stands as a repudiation of the principle that '[n]eutrality is what is required' by the Establishment Clause, *Roemer v. Board of Pub. Works*, 426 U.S. 736, 747 (1976) (Blackmun, J.)." Agostini Cert. Pet. at 12.

Petitioners now acknowledge that "[n]eutrality or evenhandedness may not be sufficient to save a program of government aid that directly funds or subsidizes religious activity." Agostini Brf. at 13. But they argue that "Title I does not directly fund religious activity. . . . It provides purely secular services directly to eligible school children." *Id.* at 13. Petitioners thus claim that "[t]he neutrality principle applies without question in a case like this one, in which *purely secular* services are provided directly *to students*." *Id.* at 17-18.

Whether or not Chapter 1 advances religion must, under 50 years of judicial precedent commencing with *Everson v. Board of Educ.*, 330 U.S. 1 (1947), depend in part on whether the aid is direct or indirect. This Court has invariably found direct aid to church-operated elementary and secondary



schools to violate the Establishment Clause. Petitioners seek to avoid this consequence by contending that "Title I does not directly fund religious activity" and it "[i]t provides purely secular services directly to eligible school children." Agostini Brf. at 13.

This Court, however, has consistently held that when the benefit flows to church-operated elementary and secondary schools, it matters not whether the aid finances a specific religious activity. In *Meek v. Pittenger*, 421 U.S. 349, 365-66 (1975), the Court stated that "[e]ven though earmarked for secular purposes, 'when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission,' state aid has the impermissible primary effect of advancing religion." In *Wolman v. Walter*, 433 U.S. 229, 250 (1977), the Court discussed *Meek*, stating that "even though the loan [of educational materials] ostensibly was limited to neutral and secular instructional material and equipment, it inescapably had the primary effect of providing a direct and substantial advancement of the sectarian enterprise."

This Court has clearly distinguished between aid to pervasively sectarian institutions and aid to other religiously-affiliated organizations, concluding that church-operated elementary and secondary schools are by their nature classified as pervasively sectarian. In *Bowen v. Kendrick*, 487 U.S. 589, 609-10 (1988), the Court stated:

> Of course, even when the challenged statute appears to be neutral on its face, we have always been careful to ensure that direct government aid to religiously affiliated institutions does not have the primary effect of advancing religion. One way in which direct government aid might have that effect is if the aid flows to *institutions that are*

*"pervasively sectarian."* We stated in *Hunt* that

> "[a]id normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission. . . ." 413 U.S., at 743 . . . . The reason for this is that there is a risk that direct government funding, even if it is designed for specific secular purposes, may nonetheless advance the pervasively sectarian institution's "religious mission." *See Grand Rapids Sch. Dist. v. Ball*, 473 U.S., at 385 . . . . Accordingly, a relevant factor in deciding whether a particular statute on its face can be said to have the improper effect of advancing religion is the determination of whether, and to what extent, the statute directs government aid to *pervasively sectarian institutions*. [Emphasis supplied.]

The Court further stated:

> Only in the context of aid to *"pervasively sectarian" institutions* have we invalidated an aid program on the grounds that there was a "substantial" risk that aid to these religious institutions would, knowingly or unknowingly, result in religious indoctrination. . . . In contrast, when the aid is to flow to *religiously affiliated institutions that were not pervasively sectarian*, as in *Roemer*, we refused to presume that it would be used in a way that would have the primary effect of advancing religion.

*Id.* at 612 (emphasis supplied).



Also the fact that proof of religious indoctrination has not been offered is not dispositive. The Court stated in *Grand Rapids Sch. Dist. v. Ball*, 473 U.S. 373 (1985), "[n]either their parents nor the parochial schools would have cause to complain if the effect of the publicly supported instruction were to advance the schools' sectarian mission and the public school system itself has no incentive to detect or report any specific incidence of improper state-sponsored indoctrination." *Id.* at 389.

Finally, the *Bowen* Court noted that in *Aguilar* "the Court's finding of excessive entanglement rested in large part on the undisputed fact that the elementary and secondary schools receiving aid were 'pervasively sectarian' and had '"as a substantial purpose the inculcation of religious values."' 473 U.S., at 411, 105 S. Ct., at 3237 (quoting *Nyquist*, 413 U.S., at 768 . . . ); *see also* 473 U.S., at 411 . . . (expressly distinguishing *Roemer, Hunt,* and *Tilton* as cases involving aid to institutions that were not pervasively sectarian)." *Id.* at 616.

Petitioners rely on *Zobrest v. Catalina Foothills Sch. Dist.*, 113 S. Ct. 2462 (1993), where this Court said:

> [T]he State may not grant aid to a religious school, whether cash or in kind, where the effect of the aid is "that of a direct subsidy to the religious school from the State."

*Id.* at 2468. The *Zobrest* Court was anything but ambiguous when it quoted from *Meek*, 421 U.S. 366, concerning the unconstitutionality of a direct subsidy to an elementary or secondary church-operated school, even if aimed to assist the "secular" courses of the school. The Court said:

> Substantial aid to the educational function of such

> schools, we explained, "necessarily results in aid to the sectarian school enterprise as a whole," and therefore brings about "the direct and substantial advancement of religious activity."

*Id.* at 2468.

In *Grand Rapids Sch. Dist. v. Ball*, 473 U.S. 373 (1985), the Court rejected the distinction between courses that "supplement" and those that "supplant" the regular curriculum since there is no way to know whether the school would have offered the program without Title I support. Justice Powell recognized this in his concurring opinion in *Felton,* stating "the type of aid provided in New York by the Title I program amounts to a state subsidy of the parochial schools by relieving those schools of the duty to provide the remedial and supplemental education their children require. This is not the type of 'indirect and incidental effect beneficial to [the] religious institutions' that we suggested in *Nyquist* would survive Establishment Clause scrutiny." *Felton*, 473 U.S. at 417. In *Grand Rapids Sch. Dist. v. Ball*, 473 U.S. at 396, the Court observed that "petitioners' argument would permit the public schools gradually to take over the entire secular curriculum of the religious school . . . ." *Id.* at 396.

Petitioners argue that the aid here flows to students and not to religious schools. But in *Grand Rapids*, the Court reasoned:

> Of course, all aid to religious schools ultimately "flows to" the students, and petitioners' argument if accepted would validate all forms of nonideological aid to religious schools, including those explicitly rejected in our prior cases. . . . It follows *a fortiori* that the aid here, which includes not only instructional materials but also the provision of instructional services by teachers in the



> parochial school building, "inescapably [has] the primary effect of providing a direct and substantial advancement of the sectarian enterprise."

473 U.S. at 395 (citing *Wolman*, 433 U.S. at 250).

## II. THREE EXISTING JUDGMENTS BASED IN PART ON *MEEK* AND *FELTON* CONFIRM THOSE DECISIONS' HOLDINGS.

The *Felton* decision was not a departure from prior law, as suggested by petitioners. Rather, it was the application of this Court's earlier teachings in *Meek*, 421 U.S. 370, 373 (1975). As this Court noted in *Grand Rapids,* 473 U.S. at 386:

> In *Meek v. Pittenger*, 421 U.S. 349, 95 S. Ct. 1753, 44 L.Ed.2d 217 (1975), the Court invalidated a statute providing for the loan of state-paid professional staff -- including teachers -- to nonpublic schools to provide remedial and accelerated instruction, guidance counseling and testing, and other services on the premises of the nonpublic schools. Such a program, if not subjected to a "comprehensive, discriminating, and continuing state surveillance," *Lemon v. Kurtzman*, 403 U.S., at 619, 91 S. Ct., at 2114 (quoted in *Meek, supra*, 421 U.S., at 370, 95 S. Ct., at 1765), would entail an unacceptable risk that the state-sponsored instructional personnel would "advance the religious mission of the church-related schools, in which they serve." *Meek*, 421 U.S., at 370, 95 S. Ct., at 1765. Even though the teachers were paid by the State, "[t]he potential for impermissible fostering of religion under these circumstances, although somewhat reduced, is nonetheless present." *Id.* at 372, 95 S. Ct., at 1766. The program in *Meek*, if not sufficiently monitored, would simply have entailed too great a risk of

state-sponsored indoctrination.

In *Meek* the Court noted that teachers were "performing important educational services in schools in which education is an integral part of the dominant sectarian mission and in which an atmosphere dedicated to the advancement of religious belief is constantly maintained." 421 U.S. at 371. The *Meek* Court stated that "[t]o be certain that auxiliary teachers remain religious neutral, as the Constitution demands, the State would have to impose limitations on the activities of auxiliary personnel and then engage in some form of continuing surveillance to ensure that those restrictions were being followed." *Id.* at 372. Title I fails to provide either the limitations or continuing surveillance.

The Secretary of Education cites two college aid cases: *Hunt v. McNair*, 413 U.S. 734 (1973); and *Roemer v. Board of Public Works of Maryland*, 426 U.S. 736 (1976), for the proposition that "[b]efore *Aguilar*, the Court stressed that no constitutional violation exists absent an actual, rather than hypothetical, danger of entanglement . . . ." Secretary's Brf. at 22. But, as explained in *Tilton v. Richardson*, 403 U.S. 672, 685-86 (1971), decided the same day as *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Court treats differently church-related institutions of higher learning and church-related elementary and secondary schools. *See also Roemer v. Board of Public Works of Maryland*, 426 U.S. at 750-51 and 751-52. Unlike elementary schools, the Court does not presume colleges and universities are pervasively sectarian.

Petitioners contend that the Court's concern about the administrative cooperation required to maintain the Title I program, infringing on interests at the heart of the Establishment Clause, was misguided in *Felton*, 473 U.S. at 413. However, a review of the guidelines, Appendix 30a-31a,



promulgated by the United States Department of Education after *Felton* demonstrates that these contacts are not incidental and obviously do not relate only to ministerial contacts between the state and religious authorities operating the religious schools. Consultation is required with the nonpublic school staff before any important decision is made by the public school officials, including determinations made concerning (1) which students will receive benefits; (2) how the students' needs will be identified; (3) what services will be offered; (4) how and where those services will be provided; and (5) how the project will be evaluated. Chapter 1 teachers and other instructional personnel are to also consult with instructional staff and to coordinate the Chapter 1 program with the regular classroom instructor. When these consultations occur within the sectarian school environment, the entanglement potential increases.

As indicated in *Walker v. San Francisco Unified Sch. Dist.*, 761 F. Supp. 1463, 1468 (9th Cir. 1995), the contacts do involve Chapter 1 teachers attending faculty meetings as well as visiting Chapter 1 students in their regular classrooms. The entanglement, both through the regular administration and resulting political divisiveness was also revealed in *Walker* at 1473 where the court acknowledged after *Felton* there was a great deal of entanglement between church and state. *Id.* at 1473. The court, after reviewing the *Felton* language concerning administrative cooperation, also acknowledged that "the court can think of no way in which Chapter 1 could be implemented without extensive coordination between the public and parochial school authorities. *Id.* at 1474.

Petitioners acknowledge that there is not now, nor has there ever been under Title I, constant on-site surveillance which *Meek* held was necessary to prevent the risk that publicly paid teachers would assist in carrying out the religious mission of

the school. What *Meek* noted would be required to avoid the risk and the Constitution demands concerned more than routine monthly on-site monitoring visits.

Petitioners dismiss the entanglement problem by contending there is no church-state entanglement when public school authorities supervise and monitor public school personnel. But that ignores a type of entanglement which is glossed over in the Secretary of Education's Brief. It noted that "the administrators of the religious schools were directed to clear the classrooms used by the public school personnel of all religious symbols." Secretary's Brf. at 30 n.11.

In *Wamble v. Bell*, 598 F. Supp. 1356 (W.D. Mo. 1984), the court dealt with the religious symbol issue. *Wamble* involved a challenge to the Chapter 1 program operated by the federal government under the bypass provision of Chapter 1. In that case the district court conducted a 23-day evidentiary hearing listening to extensive testimony from officials of the United States Department of Education, supervisors, and Title I teachers as well as superintendents and principals of Catholic and Lutheran schools. The court also received into evidence thousands of pages of deposition testimony and hundreds of exhibits. On November 28, 1984, before the decision of this Court in *Felton*, the district court permanently enjoined the challenged on-premises Title I program but *sua sponte* stayed its injunction pending this Court's disposition of *Felton*.[1]

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[1]On December 24, 1984, counsel for defendants-intervenors filed a notice to appeal to this Court under 28 U.S.C. § 1252. The caption of the case was *Ferguson v. Wamble*, No. 84-1343. The jurisdictional statement at pages 3 and 4, footnote 3, stated that "unless reversed by this Court, the court of appeal's decision in *Aguilar* and the district court's decision in this case are likely to affect Title I programs throughout the country. Thereafter the Secretary of Education also filed a Notice of Appeal captioned *Bennett v. Wamble*, No. 84-1355. Plaintiff and intervenor-



In *Wamble* the court specifically found excessive church-state entanglement. Like the program in New York, there was a requirement under the Missouri Title I program that Chapter 1 sites were to be free from religious symbols. *Wamble*, 598 F. Supp. 1363 at n.7. Nevertheless, the court in *Wamble*, 598 F. Supp. at 1364, found:

> While many BHHC [the federal government's bypass contractor] teachers have never seen a religious symbol inside a Title I classroom, religious symbols were found on some fifteen occasions mentioned in the evidence in the trial of this case. Most of the objects were promptly removed or covered, if nonremovable, upon their discovery. In one instance, however, removal occurred amid protests from the pastor and school board and after the superintendent of the Kansas City Archdiocese Schools consulted the bishop. Further, the evidence indicates that other incidents *may* have occurred -- a Title I teacher would not necessarily report the presence of a religious symbol if handled without argument at the "school level."

In discussing the excessive entanglement issue, the court concluded:

> Religion demands a spiritual identification. The obvious covering of religious symbols and removal of religious artifacts do not diminish qualitatively the spirituality of an environment otherwise pervasively

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plaintiffs filed cross-appeals styled *Wamble v. Bennett*, No. 84-152. All the appeals were dismissed for want of jurisdiction on July 2, 1985, one day after this Court's decision in *Felton*. *See* 473 U.S. 922.

> sectarian. And if the otherwise religious environment, through governmental control, is substantially altered to obtain government-funded aid, the very evil against which the Founding Fathers sought to protect has been fostered -- the church has been compromised.

*Wamble*, 598 F. Supp. at 1373. The court also stated:

> Because we recognize that the religiously affiliated school, as a *whole*, has as a central purpose, the fostering of religion, and that the pieces comprise the whole, we recognize that state control over any substantial portion of those pieces undermines the purpose of religious instruction and denigrates the institution's ability to convey freely religious ideals within its own walls and to integrate these values with education.

*Id.*

This Court in *Aguilar v. Felton*, 473 U.S. 402 (1985), came to the same conclusion as the trial court in *Wamble*, stating:

> The principle that the state should not become too closely entangled with the church in the administration of assistance is rooted in two concerns. When the state becomes enmeshed with a given denomination in matters of religious significance, the freedom of religious belief of those who are not adherents of that denomination suffers, even when the governmental purpose underlying the involvement is largely secular. In addition, *the freedom of even the adherents of the denomination is limited by the governmental intrusion into sacred matters. "[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its*



> *respective sphere." McCollum v. Board of Educ.*, 333 U.S. 203, 212, 68 S. Ct. 461, 465, 92 L.Ed.2d 649 (1948).

473 U.S. at 409-10.

Similarly, Marie Schneider, one of the plaintiffs in *Helms v. Cody* and an active Roman Catholic, testified:

> I also feel that when a religion, especially my religion, removes that symbol like a crucifix from a wall because government says that it can't be there and that church is willing to take it down; that symbol that is the essence of my faith, I'm not only injured; I am angry and I am very, very saddened because to take down that symbol off a wall at a Catholic school sends a message to the students in that school, to the faculty and to me that my faith is being compromised because government has a teacher there. . . .
>
> When we take the crucifix off the wall of a Catholic school because we want a free teacher and then government is involved excessively because I would want that crucifix to remain. I would want that church to pay for the teacher and keep the crucifix on the wall.

*Helms* Trial Tr. 4/12 at 19-20.

Justice O'Connor has observed that interference with the "independence of . . . [religious] institutions" is a wrong which the Establishment Clause condemns. In her concurring opinion in *Lynch v. Donnelly*, 465 U.S. 668 (1984), Justice O'Connor declared that government can run afoul of the Establishment Clause by "excessive entanglement with religious institutions, which may interfere with the

independence of the institutions, . . . ." *Id.* at 667-68.

In *Wamble* the court took into account the continued control of the site:

> The classrooms, while generally reserved for the exclusive *use* of the Title I teachers, are otherwise controlled by the school. Some are rooms located within larger partitioned rooms, and some are used by the school for purposes other than Title I activities when Title I classes are not being held.

*Wamble*, 598 F. Supp. at 1364.

The court in *Wamble* clearly understood the subtle pressures exerted within the context of sectarian schools' religious atmosphere. The court stated that "[o]n-premises teachers although technically and legally supervised by state authorities, are presumptively influenced by the environment in which they work, and this enhanced opportunity for influence requires greater supervision." *Wamble*, 498 F. Supp. at 1372. The court also observed that "federal monitoring often *excludes* inquiries about religious neutrality." *Id.* at 1363. The court noted:

> In this case, the nature of the aid is on-premise remedial instruction by government subsidized teachers. Government subsidization of Title I instruction in Missouri is unlike any other form of government controlled aid because it directly involves teachers placed on the premises of the pervasively sectarian environment. First, teachers are peculiarly susceptible to influence by their environment. *Wolman v. Walter*, 433 U.S. at 247, 97 S.Ct. at 2605. Second, unlike the diagnosticians discussed in *Wolman*, teachers are afforded a unique



> opportunity to form substantial and enduring relationships with students and to transmit ideological views. *Id.* Third, a teacher's handling of a subject is unpredictable. Because instruction, unlike the content of a textbook, inherently varies from teacher to teacher. In content and emphasis, there is great potential for involving in that content some aspect of faith or morals. *Lemon v. Kurtzman*, 403 U.S. at 617, 91 S.Ct. at 2113.

Because this is so, the task of this court is to ascertain whether, without excessive entanglement, the "state [can] be certain, given the Religion Clauses, that subsidized teachers do not inculcate religion" when placed on the premises of pervasively sectarian institutions, albeit in rooms largely devoid of religious symbols. *Meek v. Pittenger*, 421 U.S. 370-71. Because it is required that the state be "certain," it cannot place reliance "on the subjective good faith and professionalism of sectarian teachers." *Id.* at 369. . . . Thus, the state becomes obliged to perform a nearly impossible task, the task of reviewing both the content and the total environment of instruction to determine that whatever is transmitted adheres to the restrictions imposed by the statute and by the Constitution. *Meek* and *Wolman* indicate that the supervision, while it is by government-paid authorities over government-paid supervised teachers, is not sufficiently distinct from the continuing surveillance required over religiously controlled teachers, *unless the facilities themselves are religiously neutral*. *Wolman v. Walter*, 433 U.S. at 247; *Meek v. Pittenger*, 421 U.S. at 371-72. Influence on a therapist's behavior can be exerted either by the fact that he serves a sectarian administrator or the fact that he operates under the pervasive atmosphere of a religious institution. The danger arises from the nature of the institution, not the

nature of the pupils. *Wolman v. Walter*, 433 U.S. at 247-48.

*Id.* at 1371.

Religious atmosphere is difficult to define, but acknowledged to exist. However, a Catholic educator described it well:

> Frequently enough when one speaks about distinctive qualities of the Catholic school, the word "atmosphere" comes up. The school has some sort of intangible thing called atmosphere. It comes not from the physical facilities, or the religion classes, or the students -- at least not chiefly. It comes, for good or for bad, from the faculty. The most distinctive and valuable thing the Catholic school can offer to its parents is its faculty -- even more important than the religion classes themselves or the totality of the curriculum. . . .
>
> When the student comes into the Catholic school, he somehow becomes involved in the faculty's own Christian community life. Just as a child, for good or for bad, gets caught up in the life of the family to which he pays an extended visit, so the student is influenced by the faculty's Christian community life. The atmosphere of the Catholic school, no less real because it is intangible is that spirit created by the common Christian life conscientiously lived by the faculty and participated in by the students.

Leibrecht, *Thoughts on the Catholic School*, The Catholic Educator, 27 (May, 1966). The "atmosphere" is precisely the problem, and the Court in *Meek* and *Wolman* was more than justified in expressing concern about the resulting potential for



subtle pressures being exerted upon teachers of common religious faith as that of the sponsoring church.

As indicated by the court of appeals, though most Chapter 1 teachers teaching in religious schools in New York are not of the same faith as the schools in which they teach, many are. Here there is a particularly high risk of at least the unwitting inculcation or reinforcement of the religious beliefs espoused and taught by the parochial school.

There is no reason to believe Chapter 1 teachers providing remedial educational services within the school facility would escape its pervasively religious atmosphere. This Court understood this when it stated: "The aid is provided in a pervasively sectarian environment." *Felton*, 473 U.S. at 413.

Justice Powell, certainly no ideologue and a justice familiar with education at the local level, understood this. He explained that in accordance with this Court's earlier teachings in *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971), and *Meek v. Pittenger*, 421 U.S. 349, 371 (1975), "[t]he State must be *certain*, given the Religion Clauses, that subsidized teachers do not inculcate religion." He explained: "This is true whether the subsidized teachers are religious school teachers, as in *Lemon*, or public school teachers teaching secular subjects to parochial school children at the parochial schools." 473 U.S. at 415-16 (Powell, J., concurring).

The court in *Wamble*, referring to the decision of the court of appeals in *Felton*, 739 F.2d 48 (1984), observed that taxpayers interested in the preservation of the Establishment Clause could not be expected to mount a perpetual guard and that the court "has been wise in relying upon its reasoned apprehension of potentials rather than sanctioning case-by-case determination of the precise level of risk of fostering religion,

since such an empirical approach would inevitably lead to increased litigation in an area where some degree of certainty is needed to prevent constant controversy. . . ." *Id.* at 1367 n.11. The *Wamble* court dismissed the defendants' contention that such a view was "an absolutist" approach, stating:

> In response, this court notes first, that it is a holding based on its finding that the Title I rooms are not truly religiously neutral, a finding supported by numerous incidents wherein religious symbols were found in these rooms and by facts which indicate that the on-premise Title I rooms are in most instances physically and educationally identified with the parochial institution.

*Id.* at 1371-72 n.13.

Should this Court rule that it is constitutionally permissible for public school teachers to teach within parochial school facilities, the decision may well impact on the interests of *amici* Mary L. Helms, Amy T. Helms, and Marie L. Schneider who are also plaintiffs in *Helms v. Cody*, 856 F. Supp. 1102 (E.D. La. 1994), *appeal docketed sub nom Helms v. Picard*, No. 97-30231 (5th Cir. Mar. 17, 1997). As stated in the Brief for the Secretary of Education at 49 n.17: In *Helms* "a district court invalidated Louisiana's special education statute, insofar as it allowed state-paid teachers to teach inside pervasively sectarian schools. *Id.* at 1121-22." His decision was based on numerous factual findings. 856 F. Supp. at 1106-1122.

In the real world where thousands of school districts function on a daily basis, we know that Chapter 1 abuses abound. One such example caused *amicus* Darla Fernandez and other Catholic parents who sent their children to a Catholic school in Hollister, California, to file a lawsuit



concerning the maladministration of the Chapter 1 program. What happened in Hollister demonstrates why constant surveillance would be required when Title I services are delivered on the premises of sectarian schools.

The Hollister School District delegated the implementation of part of its Chapter 1 program to the principal of Sacred Heart School. Appendix at 3a. The result was excessive entanglement and a symbolic union of church and state. It also underscores the aid flows to the school. *Holguin v. Sacred Heart School*, No. C 90 20056 JW (N.D. Ca. 1993)

During the time in question there were three Chapter 1 aides at Sacred Heart: Barbara Sandles, Barbara Curry, and Tammy Ramirez. Barbara Sandles wanted to work at Sacred Heart as an aide because her children were enrolled there. Though nothing was available at the school, the principal told her the Chapter 1 aide would be employed by the school district. Pursuant to the principal's suggestion, Mrs. Sandles applied to the school district and within a week was hired to work at Sacred Heart. *Id.* at 7a.

Before Tammy Ramirez was employed by the school district as a Chapter 1 aide at Sacred Heart, she was the eighth grade home room mother at Sacred Heart. Barbara Curry, likewise, had children enrolled at Sacred Heart. *Id.* at 7a.

Before being employed as a Chapter 1 aide, Curry performed volunteer work at Sacred Heart working with her youngest daughter's second grade class. She was subsequently hired by Sacred Heart as the first grade aide on a one-to-one basis with the children. For instance, she assisted them to read and work with educational tools. She testified, "I think the last two years we actually went into the Chapter 1 program under Sister Margaret Ann." *Id.* at 12a.

During the 1985-86 school year and before the Chapter 1 program was moved from the school building itself to the pastoral center located on the campus of Sacred Heart, the principal had Ms. Curry select materials to order for the Chapter 1 program. Later both Curry and Sandles selected supplies to be ordered for the Chapter 1 program based upon the suggestions of the principal. *Id.* at 13a, 19a.

Curry first learned of Chapter 1 from the principal who suggested she become involved as a Chapter 1 aide. Curry testified she received all her direction and supervision from the Sacred Heart principal and considered the principal to be her "boss." In fact, Curry testified everything was done first through the principal. It was the principal who gave instruction to the Chapter 1 aides as to how much time they were to work weekly and they were then paid on an hourly basis. Curry testified that the principal would "correct us on certain things." She further testified that the principal would say "don't do this" or "try that." Curry received her paycheck from the principal of Sacred Heart and Curry and Sandles were required to sign in and out when coming to and from school each day on a sheet maintained in the principal's office. Either Curry or Sandles would pick up the key to the Chapter 1 room each day at that office. *Id.* at 13a-14a.

Curry received no advice nor instruction from the school district as to how to conduct the Chapter 1 program. Although she went to the district offices from time to time, this was only to deliver papers from the principal. Even then, she did not know what their content was. Curry did not meet with school district personnel to receive instructions or suggestions concerning the Chapter 1 program since "[m]ost of 'their' instructions came from sister." Further, the school district personnel in charge of the Chapter 1 program did not make regular visits to monitor the program. *Id.* at 14a, 19a.



The principal of Sacred Heart made repeated surprise visits to the Chapter 1 classroom where she observed the students and the teaching. According to Curry, when the principal came to the classroom she was there to see what they were doing and "to check" their work. The pastor at Sacred Heart also would visit the Chapter 1 room. *Id.*

Curry and Sandles ate lunch at the Sacred Heart lunchroom with the other private school teachers, and Curry attended the mass held for the Sacred Heart students during the school day. Curry also attended faculty meetings as an aide. *Id.*

Curry did not keep attendance records but let the classroom teachers at Sacred Heart keep the records of the Chapter 1 students. There were also occasions when the principal would request student records and would take the records from the Chapter 1 room to her office. *Id.* at 15a.

Parents of Chapter 1 students were permitted to visit the Chapter 1 room. However, the parents were required to sign in at the principal's office. *Id.* at 15a.

Some of Sacred Heart students received all of their mathematics instruction in Chapter 1 and did not receive any math training from the Sacred Heart math teacher. *Id.*

Curry did not have parent-teacher conferences and never met with parents. All contacts with parents went through the principal. When Curry was asked about what opportunities she had to find out from the parents how they might be involved in the Chapter 1 program, she testified: "It wasn't our duty to face the parents. We were aides. Sister handled all duties like that." *Id.*

Barbara Curry attended in-service training in Monterey with

the other regular classroom teachers employed by Sacred Heart. *Id.*

In November, 1987, when Joann Rianda, one of the plaintiffs in the *Holguin* case, confronted Sandles, Sandles claimed she and Curry were aides for Sacred Heart School. Sandles said they were taking the children to a classroom for enrichment because "Sister Lois cannot handle all the children in the classroom at one time." *Id.* at 3a.

In 1988 an attempt to ascertain whether her daughter had been in a Chapter 1 remedial program, Rianda went to the person in charge of the school district's Chapter 1 program and asked whether her daughter was in Chapter 1. She was told, however, she should talk with the Sacred Heart principal because it was her program. *Id.* at 3a.

The Sacred Heart School Parent/Student Guidelines shows both Barbara Curry and Barbara Sandles as part of the school faculty. It also shows that Chapter 1 and 2 are listed in the curriculum along with other courses. *Id.* at 27a, 29a.

The principal met with the Chapter 1 aides almost every day. In fact, Sandles often asked the principal for suggestions as to how to teach. *Id.* at 6a.

From time to time the Chapter 1 aides would worship with the faculty at Sacred Heart and would even attend masses held for the students. *Id.* at 6a.

Sandles acknowledged that Tamara Rianda, one of the plaintiffs and students at Sacred Heart, was very bright and when her mother inquired why Tamara needed remedial help, Sandles was following the direction of the regular teacher at Sacred Heart. When Rianda asked why Sandles had not



informed the teacher that Tamara was not entitled to Chapter 1 services, Sandles responded "[b]ecause she was one of the students that was on the list . . . [and] it wasn't my position to question it." *Id.* at 7a.

Not only did the Chapter 1 aides hold themselves out as part of the Sacred Heart staff and program, but they actively implemented school policy such as the dress code. The principal had complete access to the Chapter 1 room and records and exercised control over those records. *Id.* at 8a.

The Hollister School District deferred to the principal with regard to access to the records and looked to her as a person directing the program. *Id.* at 8a.

The *Holguin* plaintiffs notified their congressmen and the California State Department of Education. After a two-day administrative investigation in May of 1989, the California State Department of Education concluded:

> The district, is cautioned that information given to the investigation team suggests strongly that the administration of the ECIA Chapter 1 program at Sacred Heart Elementary School has been delegated largely to the school site administration. Pursuant to the provision of Aguilar v. Felton, as well as long standing statutes, the administration of the program which includes the planning, on-going implementation, evaluation of program and staff, and parent activities, are district responsibilities and must differ from the delegation given to public school site administration.

*Id.* at 8a-9a.

After Barbara Holguin and the other plaintiffs in that action,

including Darla Fernandez, notified their congressman and the state department of education that their children had been improperly and without their consent removed from the regular classroom and placed from time to time in the Chapter 1 program, Genine Holguin, one of the plaintiffs and a student at Sacred Heart, was expelled. This resulted in emotional injury to Genine requiring professional treatment.

Petitioners claim the Chapter 1 program is devoid of excessive entanglement. Darla Fernandez and the other plaintiffs in *Holguin* would say otherwise. In order to prevent a violation of the Constitution, they found it necessary to sue not only the school district but also their own church. There are hundreds of Hollisters, and the problems and lawsuits will multiply if this Court reverses *Felton* and turns its back on its earlier Establishment Clause jurisprudence. But Darla Fernandez worries what will happen if the judicial precedent upon which her consent judgment (*see* Appendix 20a-24a) was made is nullified by this Court.

## III. THIS COURT SHOULD NOT PERMIT A RULE 60(b) MOTION TO BE USED IN THIS CASE AS THE VEHICLE TO AFFECT A MAJOR CHANGE IN ESTABLISHMENT CLAUSE JURISPRUDENCE.

Plaintiffs litigated this case on the basis of this Court's prior holdings in *Marburger* and *Meek* that, as a matter of law, the Establishment Clause prohibits the sending of public school teachers and counselors into religious schools. For that reason, they chose to proceed to summary judgment primarily on a record developed in the earlier case of *National Coalition for Public Educ. & Religious Liberty v. Harris*, 489 F. Supp. 1248 (S.D. N.Y. 1980). *See Felton v. Secretary*, 739 F.2d 48, 52 (2d Cir. 1984).



The *Harris* record consisted primarily of a narrative summary which synthesized numerous affidavits prepared on behalf of defendants and seven witnesses called by defendants. The *Harris* plaintiffs called only one witness who was the Executive Deputy Commission for Education Programs in the U.S. Office of Education. He was asked only a series of primarily hypothetical questions. Plaintiffs' counsel in *Harris* based his case on legal, rather than factual, arguments in part because "the financing the trial record is beyond our means." *Harris*, 489 F. Supp. at 1252.

However, plaintiffs' in *Wamble*, *Holguin*, and *Helms* (two of which involved Title I and the other a similar state program) elected not to rely only on *Marburger* and *Meek* but to also develop a full record setting forth the abuses in the programs, including instances of excessive entanglement. The trial courts in *Wamble* and *Helms* have rendered opinions and issued judgments based not only on the law, but on the factual record developed at great expense by the parties.

In *Wamble* the main defendant was the Secretary of the U.S. Department of Education. The Department of Education, through a contractor, administered Title I to private school students in Missouri under the "bypass" provision of. The Secretary could have filed a Rule 60(b) motion in *Wamble*. Likewise, the local school district in Hollister, California, could file a Rule 60(b) motion in *Holguin* where there is a consent judgment enjoining an on-premises Title I program.

Also, there is a fully developed record in *Helms*, a case in which the court found unconstitutional an on-premises special education program operating under state law. The school district has filed an appeal. This case also provides a vehicle to determine whether *Marburger, Meek* and *Felton* represent the current state of the law as to the constitutionality of public

school teachers providing teaching services on the premises of sectarian schools.

It would be grossly unfair to the successful plaintiffs in *Wamble*, *Holguin*, and *Helms* for this Court to reverse more than 20 years of established judicial precedent without a full record when these other cases are as readily available.

## CONCLUSION

This Court should not overrule its decision in *Aguilar v. Felton* and should decline to provide relief to petitioners under Rule 60(b) of the Fed. R. Civ. P. If any relief, however, is provided, it should be restricted to remanding the case so that the parties may develop a full record of the past and present administration of New York City's Chapter 1 program.

Dated: March 28, 1997 Respectfully submitted,

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# APPENDIX

**APPENDIX A**

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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**Civil Action N0. C 90 20056 JW**

BARBARA HOLGUIN, et al.,

Plaintiffs,

v.

SACRED HEART SCHOOL, et al.,

Defendants.

Date: October 30, 1992 Time: 9:00 A.M.
Courtroom: 1 Judge: Hon. James Ware

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**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO CHURCH DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

* * * * * * *

Apparently, on January 17, 1986, there was a discussion between Lorraine Garcy of the Hollister School District and Sister Margaret Ann to implement their plans for solving the Chapter 1 problem at Sacred Heart (*see* Ex. 25 January 17, 1986 letter from Garcy to Sister Margaret Ann).

On April 21, 1986, Garcy of the school district wrote to Wade Brynelson of the State Department of Education advising him that on April 8 "the Monterey Diocese represented by Agnes Leonardich, and Joseph P. McElligott, rescinded their complaint against the Hollister School District." (Ex. 5-Leonardich Dep. at 58-59; *see also* Ex. 26). The letter spoke of a plan to provide services, stating that it would be at a neutral site leased by the Hollister School District but failed to mention the fact that the lease was with the diocese and the location was in the Pastoral Center on the church premises (Ex. 5-Leonardich Dep. at 58-61).

Although defendants contend that Sacred Heart School was not involved in the operation of the Chapter 1 program and that it was supervised from the school district offices, nevertheless on May 30, 1986, Mary Guerrero, Hollister School District Director of Curriculum Development and Special Programs, wrote to the California State Department of Education that "Sacred Heart School is the one nonpublic school which indicated an interest in participating in the Chapter 1 program. We have not yet received *their* program description. However, we will *forward* it to you as soon as we receive it." (*See* Ex. 27 (emphasis supplied).)

On June 24, 1986, a lease agreement was entered into between the Hollister School District and the Diocese of Monterey Education and Welfare Corporation for the leasing of a room in the Pastoral Center for Chapter 1 (*see* Ex. 28).

Under federal law, Chapter 1 is a remedial educational service offered to educationally deprived students. Notice to and consultation with Chapter 1 parents are required. At Sacred Heart School, however, the children of plaintiff parents were placed in the Chapter 1 program without notice to or with the knowledge of these parents (*see* Holguin Declaration at paras. 6-16; *see also* Ex. 4-Doyle Dep. at 18, 19, 43-44, 46, 59-60, 65-83, 94; Ex. 9-Rianda Dep. at 28-34, 49-66, 69-72, 121-36, 159-62; Exs. 38, 40, 41, 42, 48 at 2-6).



There is substantial evidence to support the plaintiffs' contention that although Chapter 1 requires a program for nonpublic school students to be implemented by a public agency and not by a sectarian school, the Hollister School District delegated the implementation of a portion of the district's Chapter 1 program to the principal of Sacred Heart. In November of 1987 when plaintiff Joann Rianda confronted Chapter 1 aide Barbara Sandles, Sandles indicated that she and Chapter 1 aide Barbara Curry "were aides for Sacred Heart School." (Ex. 9-Rianda Dep. at 28-31). Sandles informed Rianda that they were merely taking the children to a classroom for enrichment because "Sister Lois cannot handle all the children in the classroom at one time." (*Id.* at 31).

In 1988 in an attempt to ascertain whether her daughter had been in a Chapter 1 remedial program, Rianda was informed by Joya Chatterjee, the person in charge of the school district's Chapter 1, that "you should really speak to Sister Margaret Ann about this, because it's her program." (*Id.* at 124). And clearly it was.

On February 24, 1987, Mary Guerrero of the school district wrote to Sister Margaret Ann enclosing copies of purchase orders which Sister had sent to the school district for Chapter 1 and Chapter 2 materials which Sister Margaret Ann had requested. According to Guerrero, a processing procedure had been established by the school district for future purchase order requests by Sister Margaret Ann (*see* Ex. 29). Numerous items were purchases for Chapter 1 at the request of Sister Margaret Ann (*see* Ex. 30; Ex. 1-Brynelson Dep. at 57-59; Ex. 5-Leonardich Dep. at 136-37).

On February 29, 1988, Ed Leonard of the Hollister School District, wrote in a memo:

> The aide time for 1988-89 can be readjusted in August when a rough estimate of your actual dollar amount is received. *You may need to hire for fewer hours next year.*

(*See* Ex. 32). On March 3, 1988, Leonard wrote to Sister Margaret Ann:

> It occurs to me that your February vouchers indicate 5-3/4 hours for most days for hours worked by the Chapter 1 aides. The work-up prepared by Florence Martinez is for 5 hours per day per aide. I suggest that the aides only report 5 hours through June. *If you do that, you will save the Chapter 2 funds for carry-over to next year.*
>
> The additional 3/4 hours per day per aide is not going to leave you a carry-over.
>
> *Please let me know how I can help if this is not easy for you to implement.* I understand that the aides work more than 5-3/4 hours presently. Can we get them to report a maximum of 5 hours per day?

(*See* Ex. 32 (emphasis supplied)).

Sister Margaret Ann attempted to explain this memorandum (Ex. 8-Reardon Dep. II at 115-18). She testified:

> Mr. Leonard asked me to advise the two Chapter 1 aides, Barbara Curry and Barbara Sandles, that their time should be cut down . . . because we were out of funds.

(*Id.* at 117).

On April 28, 1988, Leonard wrote to Sister Margaret Ann:

> On the above date you have $1,18.00 remaining for Chapter 1 aide funding. At four hours per day, *you can pay for 21 days in May*.

(Ex. 34 (emphasis supplied)).

The Sacred Heart School Parent/Student Guidelines shows both Barbara Curry and Barbara Sandles as part of the school faculty (Ex. 35; Ex. 8-Reardon Dep. II at 92).



When Mrs. Holguin was attempting to find out whether her children were or were not in a Chapter 1 program, Joya Chatterjee wrote to Mrs. Holguin:

> Chapter 1 is a program for students who fall below the 25% percentile. Extra help is given to these students to achieve better in class. Sacred Heart has an approved curriculum by the state. Hollister School District *is fiscally responsible for the program and provides guidance for the academic portion.* If you should have concerns regarding the program, *please contact Sister Margaret Ann.* I'm sure she will be mose pleased to discuss the Chapter 1 program with you.

(Ex. 37 at 2 (emphasis supplied)).

Joya Chatterjee in an October 20, 1988, memo to Sister Margaret Ann reminded the Sacred Heart School principal that the school district needed "a school plan with goals and objectives." The memorandum further stated:

> The plan *should state how the school plans to use the Chapter 1 dollars,* what are the objectives for the students, and what activities will take place so that the students will achieve.

(Ex. 39 (emphasis supplied)).

On April 10, 1989, Joya Chatterjee wrote Sister Margaret Ann responding to a request for Chapter 1 program information informing Sister Margaret Ann that the Chapter 1 program "provides additional aide time to the school." (Ex. 44). The Chapter 1 plan submitted by Sister Margaret Ann clearly contemplated a Chapter 1 program operated by Sacred Heart—not the school district (*see* Ex. 47).

Under a hearing "Support Areas" (numbered page 594), the following statement appears in Sacred Heart's Chapter 1 plan:

> Sacred Heart School will support the following:

1) All reading teacher [sic] on the faculty will coordinate programs and resources for aides.

2) Sacred Heart School will inform parents on a regular basis through progress reports, parent information closures and by distribution of current educational literature.

At the end of the 1988-89 school year the Hollister School District had Sister Margaret Ann perform the supervisory evaluation of Chapter 1 aide Barbara Sandles (*see* Ex. 8-Reardon Dep. II at 59-65, 67-71, 74-77; Ex. 5-Leonardich Dep. at 78-80; Ex. 46).[3]

Although attempting to deny Sacred Heart's involvement in the chapter 1 program, clearly the Chapter 1 aides paid by federal dollars were an integral part of the Sacred Heart curriculum. The principal met with the Chapter 1 aides almost every day. In fact, Barbara Sandles often asked the principal for suggestions as to how to teach (Ex. 8-Reardon Dep. II at 64-65). The Chapter 1 aides attended Sacred Heart's faculty meetings several times yearly (*id.* at 65-66). Sandles had regular meetings with the Sacred Heart teachers (*id.* at 67) and ate at the Sacred Heart lunchroom (*id.* at 77).

From time-to-time the Chapter 1 aides would worship with the faculty at Sacred Heart (*id.* at 73-74) and would even attend Masses held for the students (*id.* at 98; *see also* Ex. 10-Sandles Dep. at 124). Strangely, according to Sandles, she did not even report to the school district at all during the first year she was employed as a Chapter 1 aide. Her contact with the supervisory personnel at the school district did not commence until Joya Chatterjee became her supervisor (Ex. 10-Sandles Dep. at 75).

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[3] The veracity of Joya Chatterjee is in substantial question in light of her incredible testimony concerning this evaluation form which she first suggested was prepared by another individual at her request. (*See* Ex. 2-Chatterjee Dep. at 101-12, 114-17).



Sandles' testimony as to the nature of the program is confusing. First, she testified that the Chapter 1 program during the 1987-88 school year was not a remedial program (Ex. 10-Sandles Dep. at 33), but later she stated that it was (*id.* at 34). However, she said that the students in the Chapter 1 program "seemed to excell." (*Id.* at 35). She acknowledged that plaintiff Tamara Rianda was very bright and when asked why Tamara needed remedial help, Sandles stated that she was going by the direction of the regular classroom teacher at Sacred Heart (*id.* at 35-37, 38-39). When asked why she didn't indicate that Tamara was not entitled to Chapter 1 services in light of her intelligence, Sandles responded "[b]ecause she was one of the students that was on the list . . . [a]nd it wasn't my position to question it." (*Id.* at 39).

During the time in question, there were three Chapter 1 aides at Sacred Heart: Barbara Sandles, Barbara Curry, and Tammy Ramirez (Ex. 8-Reardon Dep. II at 66-67, 72-74; Ex. 36 at 5, 16, 19; Ex. 10-Sandles Dep. at 61-62). When Barbara Sandles moved to Hollister, she contacted Sacred Heart for an aide position because she had enrolled her children in Sacred Heart (Ex. 10-Sandles Dep. at 90-91). Sister Margaret Ann told Sandles that she did not have anything available but that there was going to be a need for another Chapter 1 aide at Sacred Heart employed by the Hollister School District, and Sister Margaret Ann sent her to the school district to apply for the position (*id.* at 91-92, 95-96). Within the week Sandles was hired to work at Sacred Heart (*id.* at 97-99). Perhaps not coincidentally, Barbara Sandles' husband also served on the Sacred Heart School Board (*id.* at 62-63).

Before Tammy Ramirez became a school district employed Chapter 1 aide at Sacred Heart, she was the 8th grade homeroom mother at Sacred Heart during the 1987-88 school year (*see* ex. 36 at i; Ex. 8-Reardon Dep. II at 72-73).

Chapter 1 is required to supplement, rather than supplant, services offered in the school program. However, at least in the kindergarten program, the Chapter 1 services at Sacred Heart School did supplant the schools' math teaching (Ex. 4-Doyle Dep. at 79-80). There is evidence that the program was being operated as a federally-funded assistance to the school because the teacher could not handle the class, rather than as a supplemental program for the students (Ex. 9-Rianda Dep. at 31-32).

Not only did the Chapter 1 aides hold themselves out as part of the Sacred Heart School staff and program (*id.*), but they actively implemented school policies such as the dress code (*id.*), but they actively implemented school policies such as the dress code (*id.* at 43-44) and participated at the school as part of the faculty (*id.*). Sister Margaret Ann Reardon, the principal of Sacred Heart School, actively supervised the Chapter 1 aides (*id.*), had complete access to the Chapter 1 room and records (*id.* at 53-54; Ex. 4-Doyle Dep. at 70-72), and exercised control over the records (Ex. 9-Rianda Dep. at 58-59).

The Hollister School District deferred to Sister Margaret Ann with regard to access to the records (*id.*) and looked to her as the person directing the program. Sister Margaret Ann is the individual the district referred parents to if they had questions about the Chapter 1 program (*id.* at 124; Ex. 4-Doyle Dep. at 94). After a two-day administrative investigation in May of 1989, the California State Department of Education concluded:

> The district, is cautioned that information given to the investigation team suggests strongly that the administration of the ECIA Chapter 1 program at Sacred Heart Elementary School has been delegated largely to the [church] school site administration. Pursuant to the provision of Aguilar vs. Felton, as well as long standing statutes, the administration of the program which includes the planning, on-going implementation, evaluation of program and staff, and parent activities are district responsibilities and must differ from the delegation given to public school site administration.



(Ex. 48 at 19; *see also* Ex. 1-Brynelson Dep. at 21-25).

Although in her deposition, Chapter 1 aide Barbara Sandles maintained that Sister Margaret Ann did not come into the Chapter 1 room, the investigation by the California State Department of Education indicated that Sister Margaret Ann was in fact in and out of the building an average if three times daily and did walk-through supervision at least five times a week (Ex. 3-DeLane Dep. at 53).

Clearly it was Sacred Heart School that determined how its Chapter 1 program would be operated. Hollister School District was little more than a go-between relaying information between the church school and the state.

* * * * * * *

## APPENDIX B

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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**Civil Action N0. C 90 20056 JW**

BARBARA HOLGUIN, et al.,

Plaintiffs,

v.

SACRED HEART SCHOOL, et al.,

Defendants.

Date: December 11, 1992 Time: 9:00 A.M.
Judge: Honorable James Ware

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**PLAINTIFF'S SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO CHURCH DEFENDANTS' AND FEDERAL DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

Louis Leone, counsel for the school district and other defendants, wrote to the undersigned on February 18, 1992, acknowledging receipt of a Notice of Taking Deposition which included the notice for defendant Barbara Curry. He



indicated he would attempt to identify certain current school district employees or others who would have relevant information. Subsequently, Mr. Leone advised counsel for plaintiffs that he had not been able to produce Barbara Curry and had also been unable to contact her.

In September, 1992, plaintiffs again noticed the deposition of Barbara Curry and had a subpoena issued. On October 1 Mr. Leone wrote counsel for plaintiffs indicating that he was unable to produce Barbara Curry for her deposition. The subpoena was served, and thereafter Curry's daughter telephoned counsel for plaintiffs and advised that her mother had been served a deposition subpoena but had a penalty airline ticket to visit her mother in Chicago during the time the deposition to be taken. Counsel advised Barbara Curry's daughter to contact Louis Leone. Thereafter, Mr. Leone scheduled the deposition of Barbara Curry for October 29, 1992. The deposition was taken on October 29 in Fallbrook, California.

Both the federal and church defendants have filed motions for summary judgment. Both sets of defendants have also served statements of material facts which they claim are not in dispute. The federal defendants, for instance, contend that (a) services under Chapter 1 must actually be provided either by employees of a public agency or by a contractor; (b) Chapter 1 funds must be used to provide services that supplement and in no case supplant the level of services that would in the absence of Chapter 1 be available to participating children in private schools; (c) Chapter 1 funds may not be used for the needs of any private school or any the general needs of the children in private school.

In their statement of undisputed material facts, church defendants allege that (a) the content of the Chapter 1 program is determined solely by the school district personnel; (b) Chapter 1 teaching materials are selected solely by school district personnel; (c) Chapter 1 materials are purchased solely by the school district; (d) Chapter 1 personnel did not participate in Sacred Heart educational activities; (e)

the hiring and firing of Chapter 1 personnel was done solely by school district personnel; (f) assignments of Chapter 1 personnel were made solely by school district personnel; (g) training of Chapter 1 personnel was done solely by school district personnel; (h) Chapter 1 personnel were supervised solely by school district personnel; (i) Chapter 1 personnel reported solely to the school district; (j) the performance of Chapter 1 personnel was formally evaluated only by school district personnel; (k) Chapter 1 personnel are paid solely by the school district; (l) all decisions regarding the allocation of Chapter 1 funds were made solely by school district personnel.

Because of plaintiffs' counsel's inability to take the deposition of Barbara Curry, as detailed above, the information she provided at her deposition was not in the possession of plaintiffs' counsel at the time plaintiffs' previous opposition papers were prepared and filed. Counsel has only recently received the transcript of Curry's testimony.

Defendant Barbara Curry testified in direct conflict with the deposition testimony of Sister Margaret Ann Reardon, principal of Sacred Heart School, and Barbara Sandles, a Chapter 1 aide, who worked with Barbara Curry at Sacred Heart. Curry's testimony also is in direct conflict with all or most of the above-referred to statements of undisputed material facts propounded by either the federal or church defendants. Barbara Curry testified as follows relative to her involvement in the Chapter 1 program at Sacred Heart:

1. She had children enrolled in Sacred Heart School (Curry Dep. at 10-11). At that time she performed volunteer work at Sacred Heart working in her youngest daughter's second grade classroom (*id.* at 11). She was subsequently hired by Sister Margaret Ann (*id.* at 12-13). As an employee of Sacred Heart, she worked as a first grade aide working on a one-to-one basis with the children, for instance, assisting them to read and working with educational tools such as flashcards (*id.* at 14-15). She was working several hours per week at Sacred Heart on an hourly basis (*id.* at 15).



2. She worked at Sacred Heart approximately five years and stated "I think the last two years we actually went into the Chapter 1 program under Sister Margaret Ann." (*Id.* at 16). The last year she worked at Sacred Heart was during the 1987-88 school year (*id.* at 17).

3. During the 1985-86 school year and before the Chapter 1 program was held at the Pastoral Center on the campus of Sacred Heart, Sister Margaret Ann had Curry select materials to order for the Chapter 1 program (*id.* at 25). Later, both Curry and Barbara Sandles, another Chapter 1 aide, selected supplies to be ordered for the Chapter 1 program based upon the suggestions of Sister Margaret Ann. The materials were ordered by catalogs furnished by Sister Margaret Ann (*id.* at 25-30).

4. She first learned of the Chapter 1 position from Sister Margaret Ann who suggested that she become involved as a Chapter 1 aide (*id.* at 18-19). It was Sister Margaret Ann who advised Curry of the nature of the program and the fact that it would be conducted in the old dining room of the convent (*id.* at 19).

5. Curry first met Barbara Sandles, the other Chapter 1 aide, when Sister Margaret Ann introduced them. Sandles' children were also enrolled in Sacred Heart (*id.* at 68).

6. Curry received all her direction and supervision from Sister Margaret Ann and considered the Sacred Heart Principal to be her "boss." (*Id.* at 37, 38, 50, 93). In fact, Curry testified that "everything was done first through Sister Margaret Ann, anything we did we always went to her first. She was the quote, unquote, boss. . . ." (*Id.* at 41). It was Sister Margaret Ann who gave instructions to the Chapter 1 aides as to how much time they were to work weekly and they were then paid on an hourly basis (*id.* at 38, 51-52). Curry testified that Sister Margaret Ann would "correct us on certain things." She further testified that Sister Margaret Ann would say "don't do this" or "try that." (*Id.* at 56).

7. Barbara Curry's opinion was not sought as to where the Chapter 1 program should be conducted because that was somehting that was between the school district and Sister Margaret Ann (*id.* at 64).

8. Curry received her paycheck from Sister Margaret Ann (*id.* at 37-38).

9. Curry and Sandles were required to sign in and out when coming to and leaving school each day on a sheet maintained at Sister Margaret Ann's office (*id.* at 38-39).

10. Either Curry or Sandles would pick up the key to the Chapter 1 room each day at Sister Margaret Ann's office (*id.* at 39).

11. Curry received no advice nor instruction from the school district whatsoever as to how to set up or conduct the Chapter 1 program (*id.* at 86). She went to the school district offices, only to deliver papers from Sister Margaret Ann. Even then, she did not know what was contained in the papers (*id.* at 47-48, 77). According to Curry, she did not meet with school district personnel to receive instructions or suggestions concerning the Chapter 1 program since "[m]ost of [their] instructions came from Sister." (*Id.* at 48-49). Further, the school district personnel in charge of the Chapter 1 program did not make regular visits to monitor the program at Sacred Heart (*id.* at 47-49).

12. Sister Margaret Ann would repeatedly make surprise visits to the Chapter 1 classrooms where she would observe the students and the teaching (*id.* at 52). When Sister Margaret Ann came to the Chapter 1 classroom she was there to see what they were doing and "to check [their] work." (*Id.* at 53-54).

13. The pastor at Sacred Heart would from time-to-time visit the Chapter 1 classroom (*id.* at 53).

14. Curry and Sandles ate their lunches at the Sacred Heart lunchroom with the other teachers. She attended the Mass held for the students at Sacred Heart during the school day (*id.* at 44-46). Barbara Curry also attended Sacred Heart faculty meetings as an aide (*id.* at 44).



15. She did not keep attendance records but let the regular classroom teachers keep the attendance records of the students involved in the Chapter 1 program (*id.* at 74, 75-76).

16. There were occasions when Sister Margaret Ann would request student records and would take the records to her office (*id.* at 90-91).

17. Parents of Chapter 1 students, like parents of all students enrolled at Sacred Heart, were permitted to visit the Chapter 1 room in the Pastoral Center. According to Curry, "Sister allowed it." (*Id.* at 83). However, the parents were required to "sign in" at the principal's office at Sacred Heart (*id.*).

18. Some of Sacred Heart students received **all,** not just part of their mathematics instruction, in the Chapter 1 room and did not receive **any** math training from the Sacred Heart math teacher (*id.* at 80-82).

19. Curry did not have parent-teacher conferences and never met with parents. All such contact with the parents went through Sister Margaret Ann (*id.* at 76-77, 78). When she was asked about what opportunities she had to find out from the parents as to how they might be involved in the Chapter 1 program, Curry stated: "It wasn't our duty to face the parents. We were aides. Sister handled all duties like that." (*Id.* at 78).

20. Barbara Curry attended in-service training at Monterey with other regular classroom teachers from Sacred Heart (*id.* at 89).

21. It was Sister Margaret Ann who informed her as to how much money was available for the purchase of Chapter 1 materials (*id.* at 84). Even when it came time for layoff due to lack of funds, it was Sister Margaret Ann who notified Curry of the layoff (*id.* at 70).

Clearly, insofar as the Chapter 1 program related to Sacred Heart students, the Hollister School District delegated the implementation of the program to the parochial school principal contrary to the contention of the federal and church defendants. The testimony of Barbara Curry confirms plain-

tiffs' claims that the Chapter 1 program for the students at Sacred Heart was in fact operated by Sacred Heart, and it was Sister Margaret Ann—not school district personnel—who supervised and administered the program for the Sacred Heart students.

Barbara Curry even confirmed the fact that the Chapter 1 program was not operated merely as a supplemental program, but at least in certain instances supplanted the mathematics program for some students at Sacred Heart.

The testimony of Barbara Curry confirms the fact that Sacred Heart took over both the administration and implementation of the chapter 1 program. Sacred Heart acted as a substitute for the school district. There was a de facto delegation of the school district's responsibilities in providing Chapter 1 services to Sacred Heart eligible students. Thus, there is substantial evidence that the state and school district defendants have delegated a local governmental function to Sacred Heart School and other church defendants or have otherwise intertwined with the private defendants so that acts of the church defendants in relation to the Chapter 1 program are properly treated as state action.

**CONCLUSION**

For the foregoing reasons and the reasons set forth in plaintiffs' previous memorandum in opposition, defendants' motions for summary judgment should be denied.

Dated: November 24, 1992

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# APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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**CASE NO. C 90-20056 JW**

BARBARA HOLGUIN, et al.,
Plaintiffs,

v.

SACRED HEART SCHOOL, et al.,
Defendants.

[Filed, Jan 11 11:54 AM '93, Richard W. Wieking, Clerk,
U.S. District Court, No. Dist. of Ca. S.J.]

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**ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS, GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

This case is brought by six former students of the Sacred Heart School, a private Catholic school in Hollister, California, and their parents. The Plaintiffs seek legal and equitable relief from several governmental and church agencies and officials for alleged civil rights violations.

The Defendants have made several dispositive motions which are currently before the Court.

* * * * * * *

The Third, Fourth, and Fifth Claims all arise out of claims of excessive entanglement between the state and federal governments and the church defendants.

In the Third Claim Plaintiffs allege that providing Chapter 1 services on the Scared Heart School grounds amounted to excessive entanglement between church and state, violative of the Establishment Clause of the First Amendment, as expressly proscribed in *Felton v. Aquilar*. Plaintiffs contend that Chapter 1 classes were conducted at the Sacred Heart School's Pastoral Center. In support of this claim, Plaintiffs submit, *inter alia*, a lease agreement in which the School District leased a room in the Pastoral Center to provide Chapter 1 Services. *See* Pl. Ex. 28. The lease establishes that the School District, and the Church defendants, jointly acted and planned to provide Chapter 1 services at the Pastoral Center.

The Court finds there is a triable issue of material fact as to whether live Chapter 1 instruction was held at the Pastoral Center. As a matter of law, live lectures conducted in the pastoral center would violate the Establishment Clause.

In the Fourth Claim, Plaintiffs allege that the School District delegated its decision-making power for the operation of Chapter 1 services at Sacred Heart School to Sacred Heart's staff, resulting in excessive entanglement between church and state in violation of the Establishment Clause of the First Amendment.

The Church Defendants submit declarations and deposition testimony in support of their claim that no delegation of authority took place, and that Sacred Heart personnel did not participate in Chapter 1 educational activities. Chaterjee Deposition at 136; Sandles Deposition at 64, 67, 69-70, 82-83, 85. They maintain that the Chapter 1 program was administered solely by the School District. Leonardich Decl., ¶ 5; Reardon Decl., ¶ 6.

In opposition to summary judgment, Plaintiffs submit the deposition testimony of Barbara Curry (''Curry''), a Chapter 1 aide formerly employed by the School District who is a named defendant in this action.



According to her deposition testimony, Barbara Curry was recruited by Sister Margaret Ann Reardon (Reardon), Curry Deposition at 18. Curry set up the Chapter 1 program at Sacred Heart School, *Id.* at 23, and selected the equipment and furniture under Reardon's supervision. *Id.* at p. 25. Curry was involved in selecting children who would participate in Chapter 1. *Id.* at 31. Reardon gave Curry the suggestion as to how children were to be selected. *Id.* Curry's paycheck was drawn on the Hollister School District, *Id.* at 37, and was given to her by Reardon and her staff. *Id.* at 38. Reardon told her how many hours she could work, and monitored her hours. *Id.* at 38-39.

Moreover, Curry testified that she looked to Reardon as her boss, *Id.* at 47, receiving no instruction on the Chapter 1 program from the School District. *Id.* at 48-49. While the School District personnel did not make regular visits to monitor the Chapter 1 program, *Id.* at 47-49, Reardon sat in to observe the teaching, *Id.* at 52, and to check the students work. *Id.* at 53-54.

The conflicting evidence presented establishes a triable issue of material fact as to whether the School District delegated authority for the operation of the Chapter 1 program to the Church defendants.

* * * * * * *

Dated: January 11, 1993

/s/ James Ware
HONORABLE JAMES WARE
United States District Judge

## APPENDIX D

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---

**Civil Action No. C 90-20056 JW (EAI)**

BARBARA HOLGUIN; et al.,

Plaintiffs,

v.

SACRED HEART SCHOOL; et al.,

Defendants.

[Received NOV 22 1993, Richard W. Wieking, Clerk, U.S. District Court, Northern District of California, San Jose]

[Filed NOV 30 1993, Richard W. Wieking, Clerk, U.S. District Court, Northern District of California, San Jose]

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**CONSENT JUDGMENT AS TO DEFENDANT HOLLISTER SCHOOL DISTRICT AND THE BOARD OF EDUCATION OF HOLLISTER SCHOOL DISTRICT**

* * * * * * *

This action involves the providing of services to students enrolled in a sectarian school originally funded by Chapter 1



of the Elementary and Secondary School Act. Effective July 1, 1988, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary Improvement Amendments of 1988 repealed the predecessor Chapter 1. However, as part of the same legislation, Congress enacted substantially the same program in the new legislation as Part A of Chapter 1 of Title I, recodified as 20 U.S.c. § 2701 *et seq*. With respect to the participation of eligible private school children, the new statutory provisions are essentially identical to Chapter 1, and the Chapter 1 program in the Hollister School District continues under the new statute. In this Consent Judgment the program will continue to be referred to as Chapter 1, and it will include all successor programs.

In this case, defendants Hollister School District and the Board of Education of Hollister School District and plaintiffs consent that a full and final judgment be entered in favor of the plaintiffs as to all claims between Hollister and the plaintiffs and the court being fully advised in the premises, therefore:

IT IS ORDERED, ADJUDGED, AND DECREED that defendants Hollister School District and the Board of Education of Hollister School District be permanently enjoined from providing funding and/or school district employees for live instruction under Chapter 1 or successor programs to students in any facility located on a sectarian school campus;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the aforesaid defendants shall not provide computer assisted instruction in any facility located on a sectarian school campus unless the computers provided through the program be secured so as to ensure that they will be utilized only for the purposes funded and provided for by the defendant school district, which computer equipment may be ''locked'' so that it can only use certain prescreened secular software or be secured in a separate room to which only school district employees have a key and access or by other reasonable means;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in the event the computer equipment and materials are not so secured against improper use as a result of any objection or lack of cooperation by the staff at the sectarian schools whose students are the intended users of the equipment and materials, then such services may be provided to the students enrolled in the sectarian schools at a religiously neutral site off the campus of the church and/or sectarian school, such as, but not limited to, a public school site;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any computer assisted equipment and materials placed on the campus of a church and/or sectarian school under Chapter 1 or its successor program may be located at such a site only so long as the following criteria are met: a) The computer assisted program will be operated under the direction of defendant school district. b) On-site review by the school district will be limited to such matters as the installation, repair, inventory, turning equipment on and off, and maintenance of equipment. c) Sectarian school personnel may be present in the computer room to perform limited noninstructional functions such as maintaining order, assisting children with equipment operations (such as turning the equipment on and off, demonstrating the use of the computers, and accessing the program), and assisting with the installation, repair, inventory, and maintenance of the equipment. d) Neither public nor private school personnel will assist the students with instruction in the computer room. Public school personnel may, however, assist by providing instruction through computer messages, by telephone, or by television. e) Access to the computer equipment and the rest of the program will be limited to children eligible under the funded program. f) Equipment purchased with Chapter 1 funds will be used only for Chapter 1 purposes. Only software directly related to the Chapter 1 program may be used with the computer assisted instruction;



IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants be permanently enjoined from delegating any authority to the sectarian school staff as to the administration of the Chapter 1 or successor programs, including, but not limited to, the selection of personnel and the evaluation of such personnel. Defendants shall regularly monitor the extent and nature of its personnel's contact with the staff of the sectarian school and regularly prepare written reports to the school district available to the public detailing the nature and extent of the contact between the school district's personnel and sectarian school staff and the implementation of the educational program;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the aforesaid defendants shall fully comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232(g) and 20 C.F.R. § 99, *et seq.* with regard to the records of plaintiff children. This shall include searching out and releasing to the plaintiffs all records relating to their respective children in the possession of the defendants or their employees and a list of all records ever maintained by said defendants on plaintiff children.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the aforesaid defendants pay to counsel for plaintiffs the sum of Twenty-Five Thousand Dollars ($25,000) as the aforesaid defendants' portion of the attorney fees and costs expended in connection with this matter. Said payment shall constitute full satisfaction of all monetary claims held by the plaintiffs against Hollister and its employees.

Dated: November 30, 1993

/s/ James Ware
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

Dated: 11/16/93 /s/ Lee Boothby
LEE BOOTHBY, for and on behalf of Plaintiffs

Dated: 10/26/93 /s/ Thomas E. Andrade
THOMAS E. ANDRADE, Superintendent, for and on behalf of Defendants Hollister School District and the Board of Education of Hollister School District

Approved as to form:

Dated: 11/1/93 /s/ Louis A. Leone
LOUIS A. LEONE
Stubbs, Hittig & Leone, for and on behalf of Defendants Hollister School District and the Board of Education of Hollister School District



## APPENDIX E

## SACRED HEART SCHOOL

[Holguin art drawing of school by Joanne LoGuidice]

Parent-Student Handbook
Hollister, California

* * * * * * *

### PHILOSOPHY OF EDUCATION

Sacred Heart School, a Catholic elementary school, commits itself to the following mission:

- to teach the Gospel message of Christ and to provide the skills needed to meet each child's need
- to build a community based on Jesus' command to love one another
- to serve through prayer, worship, and social action.

Sacred Heart School will provide an education through which children may:

a) receive the highest possible training in our Catholic tradition

b) acquire the knowledge, skills, attitudes, values, and character traits to enrich personal living

c) develop as responsible mature Christian citizens.

### RELIGIOUS EDUCATION GOALS

The goals of Sacred Heart School are to create the following:

- A Christian atmosphere in which the students cooperate with grace to form Christ in themselves and those redeemed by Him;

- An awareness that students will have available guidance in order that they will be well informed to meet the needs of a changing society;
- A consideration that all children at Sacred Heart School regardless of ability, race, cultural background, or economic status will have opportunities for maximum growth;
- A cooperative response to share in the educational growth of the child with the home, the church, and other community agencies;
- A realization of the principles of citizenship that will enable the students of Sacred Heart School to enrich and improve the American way of life.

**DIRECTORY**

| | | |
|---|---|---|
| Department of Education | – | Monterey Diocese |
| Superintendent of Instruction | – | Agnes Leonardich |

**ADMINISTRATION**

| | |
|---|---|
| Pastor | Father Michael Miller |
| Principal | Sister Margaret Ann, O.P. |
| Assistant Principal | Mrs. Sandra Petersen |
| Secretary/Bookkeeper | Sister Francesca Bartos, O.P. |

**SCHOOL FACULTY**

| | |
|---|---|
| Kindergarten | Mrs. Felicia Andrade |
| Grade 1 | Mrs. Judith McEntire<br>Mrs. Janet Browne |
| Grade 2 | Mrs. Joan Randolph |
| Grade 2 & 3 | Mrs. Kathleen Taylor |
| Grade 3 | Mrs. Nancy Irwin |
| Grade 4 | Mrs. Susan Sweeley |



| | |
|---|---|
| Grade 4 & 5 | Mr. Richard Galli |
| Grade 5 | Mrs. Charlotte Dilley |
| Grade 6 | Miss Marilyn Westphal |
| Grade 7 | Mrs. Eileen McCullough |
| Grade 8 | Mrs. Sandra Petersen |
| Physical Education | Mrs. Bridget Christenson |
| Aide (Chapter I) | Mrs. Barbara Sandles |
| Receptionist | Mrs. Susan Gonsalves |
| Librarian | Mrs. Adeen Gatherer |
| Music | Mr. Steve Azzapardi |
| Custodians | Mr. Victor Reyes<br>Mr. Salvator Sanchez |

* * * * * * *

**CURRICULUM**

We follow the curriculum guidelines of the State of California and the Diocese of Monterey in offering the following subjects:

| | | |
|---|---|---|
| Reading | English Grammar | History of Calif. & U.S. |
| Penmanship | English Composition | History |
| Spelling | Geography | Science |
| Civics | Music | Religion - Family Life |
| Health | Honors Algebra | P. E. |
| Arithmetic | Art | Chapter I & II |
| | | Alcohol/Drug Abuse |

* * * * * * *

## APPENDIX F

[Line art, front entrance of Sacred Heart/flagstaff and flag]

PARENT/STUDENT GUIDELINES

Sacred Heart School

Hollister, California

| | | |
|---|---|---|
| Department of Education | – | Monterey Diocese |
| Superintendent of Instruction | – | Agnes Leonardich |

### ADMINISTRATION

| | |
|---|---|
| Pastor | Father Michael Miller |
| Principal | Sister Margaret Ann, O.P. |
| Assistant Principal | Mrs. Sandra Petersen |
| Secretary/Bookkeeper | Sister Francesca Bartos, O.P. |

### SCHOOL FACULTY

| | |
|---|---|
| Kindergarten | Sister Lois Rochon, O.P. |
| Grade 1 | Mrs. Jane Maurer<br>Mrs. Janet Browne |
| Grade 2 | Mrs. Jeanette Langstaff<br>Mrs. Joan Randolph |
| Grade 3 | Mrs. Olga West<br>Mrs. Nancy Irwin |
| Grade 4 | Mrs. Felicia Andrade<br>Mrs. Susan Sweeley |
| Grade 5 | Mrs. Charlotte Dilley |
| Grade 5 & 6 | Mrs. Penny Beingessner |
| Grade 6 | Miss Marilyn Westphal |



| | |
|---|---|
| Grade 7 | Mrs. Eileen McCullough |
| Grade 8 | Mrs. Sandra Petersen |
| Physical Education | Mrs. Bridget Christenson |
| Aides (Chapter I) | Mrs. Barbara Curry<br>Mrs. Barbara Sandles |
| Receptionist | Mrs. Susan Gonsalves |
| Librarian | Mrs. Frances Turner |
| Music | Mr. Kris Flores |
| Custodians | Mr. Victor Reyes<br>Mr. Salvator Sanchez |

## APPENDIX G

# ADDITIONAL GUIDANCE ON AGUILAR V. FELTON AND CHAPTER 1 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT (ECIA) QUESTIONS AND ANSWERS

June 1986

* * * * * * *

24. *Question*: What are the requirements for consultation with private school officials?

*Answer*: Section 200.70 of the Chapter 1 regulations states that the LEA shall provide services to children enrolled in private schools "in consultation with private school officials."

25. *Question*: When should this consultation take place?

*Answer*: The LEA should first consult with private school officials before making any decision that significantly affects the opportunities of private school students to participate in the project. Therefore, consultation should take place before the LEA designs a plan to serve private school students. Consultation should then continue at appropriate stages throughout the term of the project.

26. *Question*: Should this consultation include discussion regarding the method the LEA will use in serving private school students?



*Answer*: Yes. While the LEA has final responsibility for deciding how and where services will be provided, consultation with private school officials should be an integral part of making those decisions.

27. *Question*: At what stages during the term of the project is consultation appropriate?

*Answer*: Consultation should occur before important decisions are made on the project, including when determinations are made concerning—

1. which children will receive benefits;
2. how the children's needs will be identified;
3. what services will be offered;
4. how and where those services will be provided; and
5. how the project will be evaluated.

A unilateral offer of services by the LEA with no opportunity for discussion is not adequate consultation. To ensure that proper consultation and offers of equitable services are documented, the use of a form detailing the consultation and offers, with a place for the signature of private school officials, may be useful.

28. *Question*: can Chapter 1 instructional personnel consult with private school personnel?

*Answer*: Yes. Chapter 1 teachers and other instructional personnel can consult with instructional staff from the private school in order to coordinate the Chapter 1 program with the regular classroom instructor and to facilitate the success of the services provided. Such consultation should not occur at the site of the Chapter 1 services while the services are being provided. To the extent practicable, the LEA may wish to have this consultation occur at a public school site, other neutral sites, or by telephone.

* * * * * * *